

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenzo Duque	Team: Squad #8	CCRB Case #: 201802782	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/31/2018 12:50 AM	Location of Incident: Hamilton Avenue and Centre Street; Outside the 76th Precinct stationhouse	Precinct: 76	18 Mo. SOL 9/30/2019	EO SOL 9/30/2019	
Date/Time CV Reported Sat, 03/31/2018 5:20 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/10/2018 11:11 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fernando Lopes	13303	947183	076 PCT
2. SGT Ryan Monteleone	04805	950903	108 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fernando Lopes	Discourtesy: Police Officer Fernando Lopes spoke discourteously to § 87(2)(b)	
B.POM Fernando Lopes	Force: Police Officer Fernando Lopes used physical force against § 87(2)(b)	
C.POM Fernando Lopes	Abuse: Police Officer Fernando Lopes interfered with § 87(2)(b)'s use of a recording device.	
D.POM Fernando Lopes	Abuse: Police Officer Fernando Lopes damaged § 87(2)(b)'s property.	
E.POM Fernando Lopes	Abuse: Police Officer Fernando Lopes threatened § 87(2)(b) with the use of force.	
F.POM Fernando Lopes	Abuse: Outside the 76th Precinct stationhouse, Police Officer Fernando Lopes did not obtain medical treatment for § 87(2)(b)	
G.SGT Ryan Monteleone	Abuse: Outside the 76th Precinct stationhouse, Sergeant Ryan Monteleone did not obtain medical treatment for § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with IAB, under IAB Log# 2018-12908, March 31, 2018. IAB referred the complaint to the CCRB on April 10, 2018.

On March 31, 2018, at approximately 12:50 a.m., at Hamilton Avenue and Centre Street in Brooklyn, Police Officer Fernando Lopes of the 76th Precinct and Sergeant Ryan Monteleone of the 103rd Precinct were conducting a vehicle stop. PO Lopes and Sgt. Monteleone sat inside their vehicle parked behind the stopped vehicle, when they observed § 87(2)(b) standing in the street and speaking with the stopped motorist. The officers exited their vehicle, and PO Lopes allegedly stated, “What the fuck are you doing,” and “Get the fuck away from the car,” to § 87(2)(b). (Allegation A: Discourtesy – § 87(2)(g)). The officers then approached § 87(2)(b) and PO Lopes allegedly pushed § 87(2)(b) from the street onto the sidewalk (Allegation B: Force – § 87(2)(g)). Once on the sidewalk, PO Lopes allegedly grabbed § 87(2)(b)'s cell phone, which had been recording video footage, from his hand and threw it on the ground, which cracked the screen (Allegation C: Abuse of Authority – § 87(2)(g)) (Allegation D: Abuse of Authority – § 87(2)(g)). PO Lopes then handcuffed § 87(2)(b) and allegedly stated, “If you move, I’ll slam you on your face,” to § 87(2)(b) (Allegation E: Abuse of Authority – § 87(2)(g)). PO Lopes and Sgt. Monteleone then transported § 87(2)(b) to the 76th Precinct stationhouse. While the officers escorted § 87(2)(b) into the stationhouse, he complained of injuries. PO Lopes allegedly responded that if § 87(2)(b) said anything about going to the hospital at the stationhouse, he would be taken to jail. PO Lopes and Sgt. Monteleone then allegedly did not obtain medical treatment for § 87(2)(b) (Allegation F: Abuse of Authority – § 87(2)(g)) (Allegation G: Abuse of Authority – § 87(2)(g)).

§ 87(2)(b) was issued a summons for Disorderly Conduct in the First Degree as a result of this incident.

There were three surveillance videos available for this incident; however, neither video is an original, but rather a video recording of video footage. Two videos were from the BP Gas Station located at 354 Hamilton Avenue in Brooklyn, 02:10 long (Board Review 01) and 01:55 long (Board Review 02). One video was from the 76th Precinct stationhouse in Brooklyn and 01:57 long (Board Review 03).

Allegation (A): Discourtesy: Police Officer Fernando Lopes spoke discourteously towards

§ 87(2)(b)

Whether PO Lopes spoke discourteously towards § 87(2)(b) remains in dispute.

According to § 87(2)(b)'s sworn statement (Board Review 04), § 87(2)(b) walked down Centre Street towards Hamilton Avenue when he observed PO Lopes and Sgt. Monteleone stopping a black sedan. The sedan's occupants signaled to § 87(2)(b) to approach the vehicle and he did so, near the open front passenger's window. § 87(2)(b) remained on the sidewalk while speaking with the vehicle occupants, and he denied leaning down towards the window at any point in time. § 87(2)(b) did not make physical contact with the sedan occupants or exchange any objects with them. The occupants stated PO Lopes and Sgt. Monteleone were harassing them, had stopped them for no reason, and then asked § 87(2)(b) to record video footage. PO Lopes then exited the black Chevy Impala parked behind the stopped sedan. PO Lopes asked § 87(2)(b) “What the fuck are you doing,” and also stated, “Get the fuck away from the car,” to § 87(2)(b). Neither

officer addressed § 87(2)(b) via the loud speaker prior to engaging with him outside their vehicle. PO Lopes did not ask § 87(2)(b) to leave the location without using profanity.

The investigation could not identify the occupants of the stopped vehicle, and they could not be reached to provide statements regarding his incident.

In PO Lopes's statement to the CCRB (Board Review 05), PO Lopes and Sgt. Monteleone were conducting a vehicle stop in the right most lane of eastbound Hamilton Avenue when they observed § 87(2)(b) speaking with the stopped vehicle's occupants. PO Lopes did not observe where § 87(2)(b) came from. PO Lopes observed that § 87(2)(b) was stopped in the middle lane of Hamilton Avenue, which is a three-lane street in either direction. § 87(2)(b) stood in the middle lane near the driver's seat and spoke with the motorist of the stopped vehicle. § 87(2)(b) did not enter the stopped vehicle or lean into the driver's window of the stopped vehicle. However, upon further questioning PO Lopes stated that he observed what he believed to be § 87(2)(b) and the motorist shaking hands. PO Lopes and Sgt. Monteleone discussed exiting the vehicle in response to § 87(2)(b)'s presence, and they did so. Upon exiting the vehicle, PO Lopes asked § 87(2)(b) what he was doing. PO Lopes also commanded § 87(2)(b) to step on the sidewalk, as he was standing in an open traffic lane. PO Lopes estimated that he commanded § 87(2)(b) to step onto the sidewalk approximately five to six times. PO Lopes denied stating, "What the fuck are you doing," and, "Get the fuck away from the car," to § 87(2)(b) and he denied witnessing Sgt. Monteleone state such to § 87(2)(b).

Sgt. Monteleone provided a consistent statement with PO Lopes (Board Review 06). Sgt. Monteleone denied stating, "What the fuck are you doing," and, "Get the fuck away from the car," to § 87(2)(b). Sgt. Monteleone did not recall if PO Lopes stated such to § 87(2)(b).

In the surveillance video footage available for this incident (Board Review 07), § 87(2)(b) walks onto Hamilton Avenue and stands stationary in the street near the driver's window of the stopped sedan. PO Lopes and Sgt. Monteleone then exit the unmarked vehicle parked behind the stopped sedan. The video footage does not contain audio.

Because video footage corroborated the officers' statements regarding § 87(2)(b) standing in the street rather than the sidewalk, the investigation is crediting that this happened.

§ 87(2)(g)

Allegation (B): Force: Police Officer Fernando Lopes used physical force against § 87(2)(b)

Whether PO Lopes used physical force against § 87(2)(b) remains in dispute.

According to § 87(2)(b)'s sworn statement (Board Review 04), after PO Lopes asked § 87(2)(b) what he was doing, § 87(2)(b) responded that the vehicle occupants had asked him a question. PO Lopes then pushed § 87(2)(b) with both hands in the chest area once. § 87(2)(b) backed away and told PO Lopes not to put his hands on him. § 87(2)(b) stumbled backwards, but did not fall as a result of the push.

In PO Lopes's CCRB statement (Board Review 05), after he commanded § 87(2)(b) to step on the sidewalk, § 87(2)(b) was agitated and yelling statements, though PO Lopes did not recall

what statements specifically. PO Lopes and Sgt. Monteleone then approached § 87(2)(b) and PO Lopes estimated he stood approximately three feet away from § 87(2)(b). PO Lopes did not make physical contact with § 87(2)(b) at that point in time. § 87(2)(b) stated, “Push me,” and, “Don’t fucking touch me,” to PO Lopes. PO Lopes extended his arm towards § 87(2)(b) and assisted him towards the sidewalk. When asked what he meant by assisted, PO Lopes stated he continued to extend his arm and coax § 87(2)(b) onto the sidewalk, with minimal force. PO Lopes denied pushing § 87(2)(b) and he denied witnessing Sgt. Monteleone do so.

Sgt. Monteleone provided a consistent statement with PO Lopes (Board Review 06). § 87(2)(b) did not make the statements regarding pushing or touching him in response to any action taken by PO Lopes or Sgt. Monteleone, as neither made physical contact with him at that point in time. Sgt. Monteleone denied pushing § 87(2)(b) and he did not recall if PO Lopes did so.

The surveillance video footage available for this incident does not clearly depict what transpires between the officers and § 87(2)(b) after § 87(2)(b) stands stationary in the street near the driver’s window of the stopped sedan.

§ 87(2)(g)

Allegation (C): Abuse of Authority: Police Officer Fernando Lopes interfered with § 87(2)(b)’s usage of a recording device.

Allegation (D): Abuse of Authority: Police Officer Fernando Lopes damaged § 87(2)(b)’s property.

It is undisputed that PO Lopes did not interfere with § 87(2)(b)’s usage of a recording device. Whether PO Lopes damaged § 87(2)(b)’s property remains in dispute.

According to § 87(2)(b)’s sworn statement (Board Review 04), § 87(2)(b) held his cell phone to record video footage as PO Lopes pushed him. PO Lopes commanded § 87(2)(b) to drop the cell phone and § 87(2)(b) did not comply. PO Lopes then grabbed the cell phone from § 87(2)(b)’s hands and threw it onto the ground, which cracked the screen.

In PO Lopes’s CCRB statement (Board Review 05), after he coaxed § 87(2)(b) onto the sidewalk, § 87(2)(b) raised his arms up at face level and stated, “Fuck it—let’s do it,” which PO Lopes perceived as a fighting stance. PO Lopes did not recall whether § 87(2)(b)’s hands were open or closed. § 87(2)(b) made no other physical movements, and nothing other than § 87(2)(b)’s stance and statements led PO Lopes to perceive him as a threat. PO Lopes then grabbed § 87(2)(b)’s arms and spun him around while pulling them behind his back. Both Sgt. Monteleone and PO Lopes held § 87(2)(b)’s arms behind his back while placing him in handcuffs. Sgt. Monteleone did not physically engage § 87(2)(b) until PO Lopes had already grabbed his arms and spun him around. § 87(2)(b) did not violently resist the officers handcuffing him; however, PO Lopes clarified that § 87(2)(b) did not fully comply, as the officers used a minimal amount of force to restrain and handcuff him.

When asked if § 87(2)(b) held anything during his physical apprehension, PO Lopes stated § 87(2)(b) either held a cell phone in his hand or § 87(2)(b)’s cell phone was out at some point. PO Lopes did not know what happened to § 87(2)(b)’s cell phone during his physical apprehension. PO Lopes recalled removing a cell phone from § 87(2)(b)’s hand, but could not specify at what point in time he did so. PO Lopes denied throwing § 87(2)(b)’s cell phone. However, upon further questioning, PO Lopes clarified that upon handcuffing § 87(2)(b) and searching his person, PO

§ 87(2)(g)

Allegation (E): Abuse of Authority: Police Officer Fernando Lopes threatened § 87(2)(b) with the use of force.

Whether PO Lopes threatened § 87(2)(b) with the use of force remains in dispute.

According to § 87(2)(b)'s sworn statement (Board Review 04), after PO Lopes threw his cell phone to the ground, PO Lopes twisted § 87(2)(b)'s arms behind his back and began handcuffing him. PO Lopes told § 87(2)(b) not to move, stating, "If you move I'll slam you on your face." § 87(2)(b) denied resisting arrest, stiffening his arms, or moving his body in any way. § 87(2)(b) complied with PO Lopes's commands as he issued them to § 87(2)(b).

In PO Lopes's CCRB statement (Board Review 05), after PO Lopes handcuffed § 87(2)(b), § 87(2)(b) yelled out statements, but PO Lopes did not recall what he stated specifically. PO Lopes acknowledged using force to restrain § 87(2)(b) but he stated the force he used was minimal, as § 87(2)(b) did not resist arrest. PO Lopes denied stating, "If you move I'll slam you on your face," to § 87(2)(b) and he denied witnessing Sgt. Monteleone do so.

Sgt. Monteleone provided a consistent statement with PO Lopes (Board Review 06). Sgt. Monteleone denied stating, "If you move I'll slam you on your face," to § 87(2)(b) and he did not recall if PO Lopes did so.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F): Outside the 76th Precinct stationhouse, Police Officer Fernando Lopes did not obtain medical treatment for § 87(2)(b)

Allegation (G): Outside the 76th Precinct stationhouse, Sergeant Ryan Monteleone did not obtain medical treatment for § 87(2)(b)

§ 87(2)(g)

According to § 87(2)(b)'s sworn statement (Board Review 04), after PO Lopes handcuffed him, PO Lopes and Sgt. Monteleone transported § 87(2)(b) to the 76th Precinct stationhouse. While the officers escorted § 87(2)(b) into the stationhouse, § 87(2)(b) told PO Lopes and Sgt. Monteleone that his wrist hurt and he believed it to be broken. PO Lopes responded that if § 87(2)(b) said anything about going to the hospital at the stationhouse, he would be jailed. The officers released § 87(2)(b) with a desk appearance ticket. § 87(2)(b) went to § 87(2)(b) upon his release and received treatment there for a sprained wrist.

The investigation could not obtain § 87(2)(b)'s medical records for the treatment he received as a result of this incident. § 87(2)(b) who resides in Georgia, was mailed HIPPA forms with a pre-paid return envelope twice. § 87(2)(b) never mailed signed HIPPA forms to the CCRB and contact attempts to him were exhausted.

In PO Lopes's CCRB statement (Board Review 05), PO Lopes did not observe any injuries to § 87(2)(b)'s person, and § 87(2)(b) did not complain of any injuries to PO Lopes. PO Lopes was not aware of § 87(2)(b) complaining to Sgt. Monteleone of injuries. § 87(2)(b) returned to the stationhouse upon his release to retrieve his property. PO Lopes provided § 87(2)(b) his property at the stationhouse entrance, and at no point did § 87(2)(b) state that he sustained an injury while retrieving his property. PO Lopes provided the same surveillance footage (Board Review 00) of the 76th Precinct stationhouse, previously obtained by the investigation, during his interview. PO Lopes stated the video footage clearly depicted § 87(2)(b) retrieving his property without incident.

At approximately 3:00 a.m., PO Lopes received a phone call from his command regarding § 87(2)(b) had returned to the stationhouse stating that he sustained an injury and had gone to the hospital. PO Lopes was not aware of § 87(2)(b) requesting medical attention from any officer at any point in time, other than when he received the phone call from his command stating § 87(2)(b) had complained of injuries. PO Lopes denied not obtaining medical treatment for § 87(2)(b) and he denied witnessing Sgt. Monteleone do so.

Sgt. Monteleone provided a consistent statement with PO Lopes (Board Review 06).

In the 76th Precinct stationhouse surveillance footage (Board Review 03), § 87(2)(b) retrieves his property from PO Lopes without incident. The video footage does not contain audio.

§ 87(2)(b)'s Command Log Entry (Board Review 12), notes his physical and mental condition as apparently normal, and that he did not request medical attention while in police custody. The entry also does not indicate that § 87(2)(b) complained of any injuries while in police custody.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- PO Lopes has been a member of service for 10 years and has been a subject in seven CCRB complaints and 14 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- On May 2, 2018, this case was sent to mediation and on June 11, 2018, the case was returned to investigation as the complaint was no longer eligible for mediation.
- As of February 14, 2019, the New York City Office of the Comptroller's has no record of a notice of claim in regards to this complaint (Board Review 09).

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date